

MAY, 2000

WEST VIRGINIA INFORMATIONAL LETTER

NO. 119

**TO: ALL INSURANCE COMPANIES LICENSED TO DO BUSINESS IN THE
STATE OF WEST VIRGINIA**

RE: ARBITRATION AND APPRAISAL PROVISIONS

The purpose of this informational letter is to address some confusion which has developed regarding the inclusion of arbitration and appraisal provisions within contracts of insurance and to set forth acceptable language developed in accordance with West Virginia law. Therefore, in order to address certain inequities which have arisen as a result of arbitration and appraisal provisions, the West Virginia Insurance Commissioner has approved the following uniform language which can be included by insurers, other than health maintenance organizations, doing business in West Virginia.

Appraisal in a Commercial Contract of Insurance:

If we [the company] and you [the insured] disagree on the value of the property or the amount of loss, both parties may, by mutual consent, agree in writing to an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If the appraisers cannot agree upon an umpire, either may request that selection of an umpire be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If the appraisers fail to agree, they will submit their differences to the umpire.

A decision agreed to by any two will be binding.

Each party will:

- a) Pay its chosen appraiser; and
- b) Bear the other expenses of the appraisal and umpire equally.

Once both parties agree to obtain an appraisal, we retain no right to deny the claim unless the loss resulted from your [the insured] intentional material misrepresentation and/or fraudulent conduct. In that event that the loss resulted from [your] the insured's intentional material misrepresentation and/or fraudulent conduct, we retain the right to deny the claim.

Appraisal in a Personal Contract of Insurance:

If we [the company] and you [the insured] disagree on the value of the property or the amount of loss, both parties may, by mutual consent, agree in writing to an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If the appraisers cannot agree upon an umpire, either may request that selection of an umpire be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If the appraisers fail to agree, they will submit their differences to the umpire.

A decision agreed to by any two will be binding.

Payment of all expenses associated with the appraisal, including the fees of the appraisers and umpire shall be made by us if you substantially prevail. If we substantially prevail, each party will:

- a) Pay its chosen appraiser; and
- b) Bear the other expenses of the appraisal and umpire equally.

Whether a party "substantially prevails" is determined by the status of the negotiations between us [the company] and you [the insured] prior to the institution of the appraisal process. If the appraisal approximates our last damage estimate, we substantially prevail. If the appraisal approximates your last damage estimate or if our damage estimate or offer of loss payment is materially below the appraisal decision, you substantially prevail.

Once both parties agree to obtain an appraisal, we retain no right to deny the claim unless the loss resulted from your [the insured] intentional material misrepresentation and/or fraudulent conduct. In that event that the loss resulted from [your] the insured's intentional material misrepresentation and/or fraudulent conduct, we retain the right to deny the claim.

Arbitration in a Commercial Contract of Insurance:

If we [the company] and you [the insured] do not agree whether coverage is provided under this Policy of Insurance for a claim made by or against the insured, both parties may, by mutual consent, agree in writing to arbitration of the disagreement.

If both parties agree to arbitrate, each party will select an arbitrator. The two arbitrators will select a third arbitrator. If they cannot agree within 30 days upon a third arbitrator, both parties must request that selection of a third arbitrator be made by a judge of a court having jurisdiction. Unless both parties agree otherwise, arbitration will take place in the county in which the address shown in the Declarations is located. Local rules of law as to procedure and evidence will apply.

A decision agreed to by any two will be binding.

Each party will:

- a) Pay the expenses it incurs; and
- b) Bear the expenses of the third arbitrator equally.

Arbitration in a Personal Contract of Insurance:

If we [the company] and you [the insured] do not agree whether coverage is provided under this Policy of Insurance for a claim made by or against the insured, both parties may, by mutual consent, agree in writing to arbitration of the disagreement.

If both parties agree to arbitrate, each party will select an arbitrator. The two arbitrators will select a third arbitrator. If they cannot agree upon the selection of a third arbitrator within 30 days, both parties must request that selection of a third arbitrator be made by a judge of a court having jurisdiction.

Unless both parties agree otherwise, arbitration will take place in the county in which the address shown in the Declarations is located. Local rules of law as to procedure and evidence will apply.

A decision agreed to by any two will be binding.

Payment of all expenses associated with the arbitration, including the fees of the arbitrators shall be made by us if you substantially prevail. If we substantially prevail, each party will:

- a) Pay its chosen arbitrator; and
- b) Bear the other expenses of the third arbitrator equally.

Whether a party "substantially prevails" is determined by the status of the negotiations between us and you prior to the institution of the arbitration process. If the arbitration approximates our last damage estimate, we substantially prevail. If the arbitration approximates your last damage estimate or if our damage estimate or offer of loss payment is materially below the arbitrator's decision, you substantially prevail.

Only those arbitration and appraisal provisions equivalent to the language set forth herein will be approved by the West Virginia Insurance Commission. Accordingly, all insurers doing business in West Virginia whose policies contain either arbitration or appraisal provisions, or both, which are not equivalent to the language set forth herein must submit a filing to the Rates and Forms Division by July 31, 2000 with arbitration or appraisal language, or both, which is equivalent to the language set forth within this informational letter. Pursuant to W. Va. Code § 33-6-9(f), the Commissioner is withdrawing previous approval of all arbitration and appraisal language which is not equivalent to the language set forth herein as of September 1, 2000.

Hanley C. Clark
Insurance Commissioner